

04 NCAC 24C .0211 is proposed for amendment as follows:

**04 NCAC 24C .0211      CONTROLLED SUBSTANCE RESULTS**

In lieu of live testimony from a laboratory representative at a contested claims hearing, an affidavit from an authorized representative of the laboratory may be presented to prove controlled substance examination results, chain of custody, or compliance with all testing or retesting required by federal or state law.

- (1) When a party desires to introduce the affidavit at the hearing, a copy of the affidavit shall be received by the party against whom the affidavit will be offered at least two days before the hearing.
- (2) If the party who desires to introduce the affidavit is unable, despite reasonable efforts, to accomplish the required service within the time specified, the Appeals Referee may adjourn or continue the hearing to allow such service to be accomplished. However, the Appeals Referee shall not continue the hearing if the party against whom the affidavit is offered has refused to accept service or has taken other steps to avoid or delay receipt of the affidavit.
- (3) At the hearing, the party shall offer an authenticated copy of the affidavit as an exhibit.
- (4) If the party against whom the affidavit is offered objects to the entry of the affidavit into the official record, the objecting party may request an adjournment or continuance of the hearing to subpoena the author of the affidavit. The affidavit's author shall be permitted to testify by telephone at the reconvened hearing.
- (5) Once the affidavit is made a part of the official record of evidence compiled by the Appeals Referee, the Appeals Referee ~~may may~~, in ~~their~~ his or her discretion, base findings of fact on the affidavit.
- (6) The results of the controlled substance examination and compliance with any applicable statutory or regulatory procedural requirements shall be deemed proven if the claimant admits or stipulates to them during the hearing or by affidavit.

*History Note: Authority G.S. 95-230; 95-231; 95-232; 95-233; 95-234; 95-235; 96-4; 96-15; ~~96-235~~;  
Eff. July 1, 2015;  
Amended Eff. July 1, 2018.*